a

RE AMRAN AHMAD, EX P MBF FINANCE BHD

HIGH COURT MALAYA, MUAR
JEFFREY TAN J
[BANKRUPTCY NO: 29-1076-2002]
b 29 MARCH 2005

BANKRUPTCY: *Receiving and adjudication orders - Appeal against - Grounds - Service - Whether creditor's petition properly served - Identity card number of judgment debtor not correctly stated - Whether there was* c *injustice caused - Change of name of judgment creditor - Whether changed the identity of judgment creditor - Companies Act 1965, s. 23(6) - Failure to cite new name of judgment creditor in documents filed - Companies Act 1965, s. 121(1A) - Whether a defect that could invalidate proceeding in bankruptcy - Bankruptcy Act 1967, s. 131 - Change of* d *judgment debtor's address - Whether there was notification from the judgment debtor himself*

This was the judgment debtor's appeal to the judge in chambers against the order of the learned senior assistant registrar (SAR) dismissing the judgment debtor's application to set aside the receiving order and adjudication order. The e facts were that the judgment debtor ('JD) failed to set aside a default judgment obtained by the judgment creditor (JC) and was served with the instant bankruptcy notice (BN) and the instant creditor's petition (CP). Subsequently, the JD was adjudged a bankrupt. It was the JD's argument that (1) the CP was not properly served because the identity card number of the JD was not f correctly stated in two documents filed by the JC; (2) MBf Finance was no longer in existence when the BN was issued; (3) the JC's failure to cite its new name in the documents filed and its failure to comply with s. 121(1A) Companies Act 1965 and (4) service was effected on the old address despite notification.

g **Held (dismissing the appeal):**

[1] For the greater part of the documents filed by the JC, the identity card number of the JD was correctly stated. It was apparent that the omission of the new identity card number in encl. 2 and the mistake in the new h identity card number in encl. 30 was due to typographical errors. No injustice was caused. (p 176 f)

i

[2] Section 23(6) of the Companies Act 1965 provides that 'a change of name pursuant to this Act shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued by or against it by its new name.' Thus, the change of name of the JC from MBf Finance Berhad to Am Finance Berhad would not change the identity of the JC. MBf Finance continued to exist, albeit under a new name. Hence, there was no merit in the argument that MBf Finance was no longer in existence on the day that the BN was issued, and that the officer who attested the CP was no longer an officer of MBf Finance Berhad. (pp 176 h & 177 a-c)

[3] The JC had not cited its new name in the documents filed after its change of name and had failed to comply with s. 121(1A) of the Companies Act 1965. But that offence, which was not a defect or irregularity, could not invalidate this proceeding in bankruptcy. In any event, s. 131 of the Bankruptcy Act 1967 provides that 'no proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of the opinion that substantial justice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.' Here, no injustice could have been caused by the omission of the new name in the documents filed after the change of name. The continued use of the old name only ensured that the JD would not be confused by the identity of the petitioning creditor but would know that the petitioning creditor was the same judgment creditor. (p 177 d-f)

[4] As to the final argument that the JD had notified the JC of his change of address and that the JC had duly acknowledged it, the JD had referred to encl. 37 exh. AA7, in particular, to the letter dated 14 February 2000 which allegedly had notified the JC that the principal borrower and its directors had changed their respective addresses of business and residence. The JC, however, referred to the guarantee which provided the given address as the same one stated in the BN and CP. First and foremost, the letter dated 14 February 2000 was that of the principal borrower and not of the JD. And the letter dated 18 February which allegedly had acknowledged the notification of the change of address was that of the Arab-Malaysian Finance Berhad and in respect of different loan accounts, and not that of the JC. There was no notification from the JD himself that he had changed his address. The JC could not be expected to act

on the letter dated 14 February 2000. Given the uncertainty, where there had not been any notification from the JD himself that he had changed his address, the JC had no other course but to resort to the contractual address as the address for service. (pp 177 g-h & 178 a-c)

Case(s) referred to:

Hamidah Abd Hamid & Anor v. Polynesia Offshore Supplies (B) Bhd [1990] 3 MLJ 94 ***(refd)***

Leong Moh Sawmill Co Sdn Bhd v. Standard Chartered Bank & Ors [1997] 2 CLJ 131 CA ***(refd)***

MBf Finance Bhd v. Ting Kah Kuong [1993] 3 CLJ 492 HC ***(refd)***

Megnaway Enterprise Sdn Bhd v. Soon Lian Hock [2003] 5 CLJ 103 HC ***(refd)***

Perkayuan OKS No 2 Sdn Bhd v. Kelantan State Economic Development Corp [1995] 1 CLJ 761 FC ***(refd)***

Re Solid H Gold Engineering Works, ex p the Official Assignee [1988] 3 MLJ 456 ***(refd)***

Legislation referred to:

Bankruptcy Act 1967, s. 131
Bankruptcy Rules 1969, r. 9(1)
Companies Act 1965, ss. 23(6), 121(1A)

For the judgment creditor - Munawira Mohamad; M/s Abdul Rahman Saad & Assoc
For the judgment debtor - Ng Aik Beng; M/s AB Ng & Assoc

Reported by Suhainah Wahiduddin

JUDGMENT

Jeffrey Tan J:

This is the judgment debtor's appeal to judge-in-chambers (encl.47) against the order of the learned SAR dated 24 August 2004 dismissing the judgment debtor's application (encl. 38) to set aside the receiving order and adjudication order dated 20 April 2004.

The following are not in dispute. On 15 January 1998, in Malacca Sessions Court 52-741-1997, the JC obtained default judgment in the sum of RM193,551.98 against the JD, which default judgment with accrued interest amounted to RM291,422.11 on 19 September 2002. The JD attempted but failed to set aside the said default judgment. On 15 April 2003, the JD was served with the instant bankruptcy notice (BN). On 9 April 2004, the JD was served with the instant creditor's petition (CP) filed on 29 August 2003. On 20 April 2004, the JD was adjudged a bankrupt.

Mr A.B. Ng for the JD arqued that the CP was not served, not properly served. The identity card number stated in the affidavit of service was not that of the JD. The name was correct, but not the identity card number. The identity card number should be 650301-08-7141. A0034106 was the correct identity card number, but it was the old identity card number. The same wrong identity card number was stated in the draft ROAO. The identity card number stated in the BN was correct, but the request for the BN did not state the new identity card number. The identity card number is a requirement of Form 1. On 3 April 2002, MBf had changed its name to Am Finance (see encl. 40 exh. NEM1). On 21 May 2002, Am Finance was vested with the assets of Arab Malaysian Finance Berhad (see encl. 40 exh. NEM3). When BN was issued on 19 September 2002, MBf Finance was no longer in existence. In *MBf Finance Bhd v. Ting Kah Kuong* [1993] 3 CLJ 492, the court held that all proceedings could commence under the new name. Section 121(1A) of the Companies Act 1965 requires the former name to be used together with the new name for 12 months from the date of change of name. Section 23(6) of the Companies Act only applies to pending suits. The person who attested the CP was no longer an authorised person, as he was no longer an MBf officer. The JD had informed the JC of his new address (counsel referred to encl. 37 exh. AA7). That notification was acknowledged. On 18 February 2002, the JC had used the new address. Service was effected on the old address despite the notification in AA7 dated 14 February 2000. No amendment could be made to validate the ROAO (counsel referred to *Re Solid H Gold Engineering Works, ex parte the Official Assignee* [1988] 3 MLJ 456, and *Hamidah bte Abd Hamid & Anor v. Polynesia Offshore Supplies (B) Bhd* [1990] 3 MLJ 94).

Munawira bte Mohamad answered that the JC had not received the said notification of the new address. The so-called letter of acknowledgement dated 18 February 2002 was that of Arab Malaysian Finance Berhad, then a separate legal entity, and not that of the JC, and that letter concerned a different account. It was agreed that the address for service shall be the address stated in the guarantee (counsel tendered the pertinent appeal record in Malacca 12-21-2000). The old identity card number was a typographical error, and the JD was not prejudiced by that mistake. A change of name would not affect the proceedings. There was no need to change the particulars of the JC (counsel referred to *Leong Moh Sawmill Co. Sdn Bhd (In liquidation) v. Standard Chartered Bank & Ors* [1997] 2 CLJ 131). Technical objections should be disregarded (counsel referred to *Megnaway Enterprise Sdn Bhd v. Soon Lian Hock* [2003] 5 CLJ 103).

Rule 9(1) of the Bankruptcy Rules 1969 provides that "every proceeding in a bankruptcy matter shall be dated and shall with necessary additions, be intituled as in Form 1". Form 1, as amended by PU (A) 60/93, calls for the insertion of the name and identity card number of the debtor. The correct identity number of the JD is 650301-08-7141 (see encl. 37 exh. AA3). But that identity card number was not stated and or was not correctly stated in 2 documents filed by the JC; in the form of request for the issuance of the BN (encl. 2) only the old identity card number was stated, and in the affidavit of posting of the CP (encl. 30) the old identity card number was correctly stated but the new identity card was incorrectly stated as 6503**10**-087141 (the bold being the mistake) instead of 650301-08-7141. But otherwise, that new identity card number (650301-08-7141) was correctly stated all other documents, namely, in the BN (encl. 3), in summons-in-chambers dated 2 Decembeer 2002 (encl. 7), in the affidavit (encl. 6) supporting encl. 7, in the form of notice of advertisement of the BN (encl. 12), in the affidavit of advertisement and posting of the BN (encl. 14), in the CP (encl. 17), in summons-in-chamber dated 2 January 2004 (encl. 21), in the affidavit (encl. 20) supporting encl. 21, in the order dated 10 February 2004 (encl. 25), in the form of notice of advertisement of the CP (encl. 26), in the affidavit of posting of the CP (encl. 29), and, in the receiving order and adjudication order (encl. 45). As a matter of fact, both the old and new identity card numbers (A0034106 and 650301-08-7141) were stated and correctly stated in the aforesaid encls. 3, 6, 7, 12, 14, 17, 20, 21, 25, 26, 29, and 45. In other words, for the far greater part of the documents filed by the JC, the identity card number of the JD was correctly stated. Given so, it should be apparent that the omission of the new identity card number in encl. 2 and the mistake in the new identity card number in encl. 30 would have been due to typographical errors. In any case, it would not even remotely appear that any injustice was caused by those typographical errors. Enclosure 2 was annexed together with encl. 3, where the new identity card number was correctly stated. In both encls. 2 and 3, the old identity car number was correctly stated. The old identity card was an old identity card number, but it belonged nevertheless to the JD. Hence, the JD should know that the encls. 2 and 3 concerned him and him alone. The old identity card number was correctly stated in encl. 30, and similarly the JD should know that encl. 30 concerned him and him alone. As said, no injustice was caused by those typographical errors.

Also, no iniustice was caused by the failure to cite the new name of the JC in the documents filed after 3 April 2002. Section 23(6) of the Companies Act 1965 provides that "a change of name pursuant to this Act shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any

legal proceedings that might have been continued or commenced by or against it by its former name may be continued by or against it by its new name". That would mean that the change of name of the JC from MBf Finance Berhad to Am Finance Berhad would not change the identity of the JC. "The change in name ... does not affect the entity of the company" (*Perkayuan OKS No 2 Sdn Bhd v. Kelantan State Economic Development Corp* [1995] 1 CLJ 761 per Lamin FCJ, as he then was). MBf Finance Berhad continued to exist, albeit under a new name. In reality if not in name by reason of the change of name, employees of MBf Finance Berhad continued to be employees of MBf Finance Berhad. Hence, there was no merit in the argument that MBf Finance was no longer in existence on the day (19 September 2002) that the BN was issued, and that the officer who attested the CP was no longer an officer of MBf Finance Berhad.

Section 121(1A) of the Companies Act 1965 stipulates that "where a company has changed its name pursuant to s. 23, the former name of the company shall also appear beneath its present name on all documents ... for a period of not less than 12 months from the date of change, and if default is made in complying with this subsection the company shall be guilty of an offence against this Act". The JC had not complied with the said s. 121(1A). The JC had not cited its new name in the documents filed after its change of name. But that offence, which was not a defect or irregularity, could not invalidate this proceeding in bankruptcy. In any event, s. 131 of the Bankruptcy Act 1967 provides that "no proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of the opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court". And in the opinion of this court, no injustice could have been caused by the omission of the new name in the documents filed after the change of name. If at all, it could be said that the continued use of the old name only ensured that the JD would not be confused by the identity of the petitioning creditor but would know that the petitioning creditor was the same judgment creditor.

The final argument by counsel for the JD was that the JD had notified the JC of his change of address and that the JC had duly acknowledged the change of address. Learned counsel for the JD referred to encl. 37 exh. AA7, in particular, to the letter dated 14 February 2000 which allegedly had notified the JC that the principal borrower, Amran Ahmad Transportation Sdn Bhd, and its directors had changed their respective addresses of business and residence to 17, Jalan USJ 16/3E 47630 Subang Jaya, Selangor. Learned counsel for the JC referred however to the guarantee which provided that any

"demand ... shall be validly made if served on me/us personally or sent to me/us by prepaid ordinary post to or left at my/our address stated below ... or that last known to you ...", and the given address of the JD in the said guarantee was 8 Jalan Tanjung 2, Taman Sri Tanjung Indah, Tanjung Agas, 84000 Muar, Johor, the same as the address stated in the BN and CP. First and foremost, let it be said that that letter dated 14 February 2000 was that of the principal borrower and not that of the JD. And the letter dated 18 February 2002 which allegedly had acknowledged the notification of the change of address was that of the Arab-Malaysian Finance Berhad and in respect of different loan accounts, and not that of the JC. In fact, strictly speaking, there was no notification from the JD himself that he had changed his address. Given so, the JC could not be expected to act on the letter dated 14 February 2000. Given the uncertainty, where there had not been any notification from the JD himself that he had changed his address, the JC had no other course but to resort to the contractual address as the address for service.

For the above reasons, this appeal to judge-in-chambers is dismissed with costs.